



# California Fair Political Practices Commission

August 28, 1989

Bruce Gilbert  
District Attorney  
County of Mariposa  
P.O. Box 965  
Mariposa, CA 95338

Re: Your Request for Advice  
Our File No. A-89-429

Dear Mr. Gilbert:

You have requested advice regarding application of the mass mailing provisions of the Political Reform Act (the "Act"),<sup>1</sup> as amended by Proposition 73 on the June 7, 1988 ballot.

## QUESTION

The Sheriff's Department of Mariposa County publishes a quarterly newsletter which is made available at various public and private locations. Under the mass mailing provisions, may you write a column, with a byline containing your name and a reference to your office as the District Attorney of Mariposa County, for each quarterly issue of the newsletter?

## CONCLUSION

The mass mailing prohibition does not apply when members of the public pick up a newsletter, of their own volition, from an agency's offices or a meeting of a public agency or public official. Therefore, your name and a reference to your office may appear in the byline of your column if the Sheriff's Department newsletter is placed only at the locations specified above. The

---

<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

exception does not apply to materials made available at private locations where a meeting of a public agency or public official is not being held.

#### FACTS

You are the District Attorney of Mariposa County. The Mariposa Sheriff's Department publishes a quarterly newsletter, entitled "The Neighborhood Watch", which contains law enforcement-related articles. The newsletter is not mailed to citizens, but is available at various public and private locations in the county and may be picked up by whoever wishes to do so.

The Sheriff's Department has asked you to write a column for each quarterly issue. The byline for the column will contain both your name and a reference to your office.

#### ANALYSIS

Section 89001 of the Political Reform Act, as amended by Proposition 73, provides that "no newsletter or other mass mailing shall be sent at public expense." A mass mailing is defined as over 200 substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry. (Section 82041.5.)

The Commission has determined that the intent of the voters in adopting Proposition 73 was to prevent elected officers from gaining an advantage from incumbency by using public funds to send out newsletters and other mass mailings which increase their name recognition. The Commission has adopted Regulation 18901 (copy enclosed), which implements Section 89001.

Regulation 18901(c)(1) states that a newsletter or other mass mailing may not be sent at public expense if:

(1) The name of the elected officer or his photograph appears on the document; and

(A) The elected officer exercises direction and control over the content, production, or distribution of the document, or

(B) The document is sent at the request or suggestion of the elected officer or his or her agent; or

(C) The document is signed by, or is designated as being from, the elected officer or his or her office;...

Since you are writing the column, you are in a position to exercise direction and control over its content. The column will be designated as being from you, as the byline will contain your name and a reference to your office.

Section 89001 excludes from the term "mass mailing" materials which are sent in response to an unsolicited request. Since materials sent in response to an unsolicited request are not subject to the mass mailing prohibition, such materials may include the name, office or photograph of the elected officer. The question becomes whether "The Neighborhood Watch" is sent in response to an unsolicited request.

Regulation 18901(h), which defines "unsolicited" specific request, provides that:

..."unsolicited" specific request means a communication which is not requested or induced by the elected officeholder or any third person acting at his or her behest....

\* \* \*

Members of the public who come to an agency's offices or to a meeting and who pick up materials for themselves will be deemed to have made an unsolicited specific request for those materials.

Therefore, an unsolicited request for materials is made if individuals come to a public agency or to a meeting held by the agency or official, and pick up these materials for themselves of their own volition. This exception does not apply to materials made available at private locations unless a meeting of the public agency or official is being held. (Connelly Advice Letter, No. A-89-198, copy enclosed.) Materials which are actively distributed or which individuals are induced to request by the officeholder or a third person acting at his or her behest are not "sent in response to an unsolicited request."

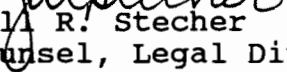
Accordingly, the prohibition does not apply to the Sheriff's Department newsletter as long as it is placed in a public office or where a meeting of an agency is being held. In those situations, "The Neighborhood Watch" may contain your name and a reference to your office.

However, if the newsletter is placed in private locations, the exception noted above does not apply. You are then subject to the prohibitions set forth in Regulation 18901(c)(1), and your column may not contain your name or a reference to your office.

I hope this answers your questions regarding the mass mailing provisions as they pertain to your column in "The Neighborhood Watch." If you have any questions, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel

By:  Jill R. Stecher  
Counsel, Legal Division

KED:JRS:aa

Enclosures

BRUCE GILBERT

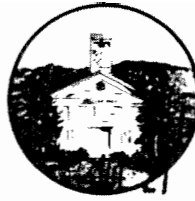
DISTRICT ATTORNEY

PUBLIC ADMINISTRATOR

PUBLIC GUARDIAN

GEORGE W. GRIFFITH

ASSISTANT DISTRICT ATTORNEY



PPC

12 11 PM '89

OFFICE OF

## DISTRICT ATTORNEY

COUNTY OF MARIPOSA

5100 BULLION STREET  
P. O. BOX 965  
MARIPOSA, CALIFORNIA  
95338

CRIMINAL DIVISION  
(209) 966-3626

FAMILY SUPPORT DIVISION  
(209) 966-3400

July 20, 1989

Kathryn Donovan  
General Counsel  
Fair Political Practices Commission  
428 "J" Street, Suite 800  
Sacramento, CA 95814

Dear Ms. Donovan:

I, as the District Attorney of Mariposa County, am requesting written advice from your agency as to the following situation:

The Sheriff's Department in this county publishes a four page (8" x 11") newsletter on a quarterly basis. It is not mailed to citizens, but rather, is left in stacks at various locations around the county, available to be picked up by whoever wishes to do so. The general content of the newsletter, which is entitled "The Neighborhood Watch", is law enforcement related; i.e., articles about new criminal laws, the dangers of drunk driving, the drug problem, safety tips to homeowners and motorists, etc.

I have been asked to write a column for each quarterly issue. May I, as an elected official, do so without violating any FPPC laws, rules, or regulations?

Thank you for your attention to my inquiry.

Sincerely,

BRUCE GILBERT  
District Attorney

89-429

BRUCE GILBERT  
DISTRICT ATTORNEY  
PUBLIC ADMINISTRATOR  
PUBLIC GUARDIAN  
GEORGE W. GRIFFITH  
ASSISTANT DISTRICT ATTORNEY



PPC  
JUL 21 12 11 PM '89

OFFICE OF  
DISTRICT ATTORNEY  
COUNTY OF MARIPOSA

5100 BULLION STREET  
P. O. BOX 965  
MARIPOSA, CALIFORNIA  
95338

CRIMINAL DIVISION  
(209) 966-3626

FAMILY SUPPORT DIVISION  
(209) 966-3400

July 20, 1989

Kathryn Donovan  
General Counsel  
Fair Political Practices Commission  
428 "J" Street, Suite 800  
Sacramento, CA 95814

Dear Ms. Donovan:

I, as the District Attorney of Mariposa County, am requesting written advice from your agency as to the following situation:

The Sheriff's Department in this county publishes a four page (8" x 11") newsletter on a quarterly basis. It is not mailed to citizens, but rather, is left in stacks at various locations around the county, available to be picked up by whoever wishes to do so. The general content of the newsletter, which is entitled "The Neighborhood Watch", is law enforcement related; i.e., articles about new criminal laws, the dangers of drunk driving, the drug problem, safety tips to homeowners and motorists, etc.

I have been asked to write a column for each quarterly issue. May I, as an elected official, do so without violating any FPPC laws, rules, or regulations?

Thank you for your attention to my inquiry.

Sincerely,

BRUCE GILBERT  
District Attorney



# California Fair Political Practices Commission

July 25, 1989

Bruce Gilbert  
District Attorney  
County of Mariposa  
P.O. Box 965  
Mariposa, CA 95338

Re: Letter No. 89-429

Dear Mr. Gilbert:

Your letter requesting advice under the Political Reform Act was received on July 21, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jill Stecher an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan  
General Counsel

KED:plh